

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR ACTION ON RULE AMENDMENT**

**Agenda # III.A.1.**

**Agenda Item Summary:** The department requests that the Board initiate rulemaking to amend the public water supply rules, in accordance with MCA, 75-6-104 and 75-6-108, to allow the department to collect fees commensurate with the costs of engineering plan and specification review.

**List of Affected Rules:** This rulemaking would amend ARM 17.38.101 and 106.

**Affected Parties Summary:** The proposed rule amendments could affect all parties submitting plans and specifications for department engineering review under the public water supply rules.

**Scope of Proposed Proceeding:** The department requests that the Board initiate rulemaking, conduct a public hearing, and take testimony regarding the proposed amendments.

**Background:** The legislature requires the department to collect fees commensurate with the cost of reviewing plans and specifications. MCA, 75-6-108(3), states, “The board shall by rule prescribe fees to be assessed by the department on persons who submit plans and specifications for construction, alteration, or extension of a public water supply system or public sewage system. The fees must be commensurate with the cost to the department for reviewing the plans and specifications.” Past legislative audits identified that the department was not recovering the costs for engineering review. In an effort to address that issue, in 2005, the department revised its engineering fees. Unfortunately, the fee increase did not completely resolve the issue. The department is projecting a \$150,000 revenue shortage in comparison to costs. The legislature requires that the department collect fees for engineering review that are commensurate with the costs of those reviews. Section 75-6-108(1), MCA. In 2005, the Board modified the review fees to address legislative audits that found that fees were not recovering review costs. However, in 2007 the department incurred a shortage of approximately \$150,000 based on approximately 420 applications. The fee changes proposed in these rules would allow the department to collect approximately \$150,000 more in fees for 420 applications in a year. Although the department can not predict the number of applications that it will receive next year, the proposed fees are intended to correct the discrepancy between review fees and review costs. The proposed fee changes are intended to resolve this issue. Other proposed changes are intended to clarify rule requirements.

**Hearing Information:** The department recommends that the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments.

**Board Options:** The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the department's request to initiate rulemaking.

**DEQ Recommendation:** The department recommends that the Board initiate rulemaking and appoint a hearing officer to conduct a public hearing, as described in the enclosed proposed draft Notice of Public Hearing.

**Enclosures:**

1. Draft Proposed Notice of Public Hearing on Proposed Amendment.